

1 **UNITED STATES DISTRICT COURT**
2 **WESTERN DISTRICT OF NEW YORK**

3
4 UNITED STATES OF AMERICA,)
) Case No. 1:18-CR-00140
5) (RJA) (HKS)
 Plaintiff,)
6)
vs.) June 26th, 2019
7)
DANIEL VILLAFANE-LOZADA,)
8)
 Defendant.)

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10
11 **TRANSCRIPT OF SENTENCING**
12 **BEFORE THE HONORABLE RICHARD J. ARCARA**
13 **SENIOR UNITED STATES DISTRICT JUDGE**

14 APPEARANCES:

15 For the Plaintiff: JAMES P. KENNEDY, JR., ESQ.
 UNITED STATES ATTORNEY
 BY: JEREMY MURRAY, ESQ.
16 ASSISTANT UNITED STATES ATTORNEY
 138 Delaware Avenue
17 Buffalo, NY 14202

18 For the Defendant: FEDERAL PUBLIC DEFENDER'S OFFICE
 BY: JEFFREY BAGLEY, ESQ.
19 300 Pearl Street, Suite 200
 Buffalo, NY 14202

20 Court Reporter: MEGAN E. PELKA, RPR
21 Robert H. Jackson Courthouse
 2 Niagara Square
22 Buffalo, NY 14202

01:12PM 1 THE CLERK: Criminal action 2018-140A. United States
01:12PM 2 vs. Daniel Villafane-Lozada. Sentencing. Counsel, please
01:12PM 3 state your name and the party you represent for the record.
01:12PM 4 MR. MURRAY: Good afternoon, Your Honor. Jeremy
01:12PM 5 Murray on behalf of the United States.
01:12PM 6 MR. BAGLEY: Good evening, Judge. Jeffrey Bagley for
01:12PM 7 Mr. Villafane-Lozada.
01:12PM 8 THE COURT: Good afternoon. Sorry we're running a
01:12PM 9 little late here.
01:12PM 10 MR. BAGLEY: No problem, Judge.
01:12PM 11 THE COURT: Are we ready?
01:12PM 12 MR. BAGLEY: Yes.
01:12PM 13 THE COURT: Government is ready?
01:12PM 14 MR. MURRAY: Yes, Your Honor.
01:13PM 15 THE COURT: The defendant stands before the Court for
01:13PM 16 sentencing on his previous plea of guilty to one count of
01:13PM 17 possession of child pornography involving a prepubescent minor
01:13PM 18 in violation of Title 18, United States Code, Section
01:13PM 19 2252A(a)(5)(B) and 2252A(b)(2). I know counsel reviewed the
01:13PM 20 report. I assume, Mr. Bagley, you reviewed that with your
01:13PM 21 client?
01:13PM 22 MR. BAGLEY: Yes, Judge.
01:13PM 23 THE COURT: The Court hereby accepts the terms and
01:13PM 24 conditions of the plea agreement and the plea of guilty. I
01:13PM 25 will place the report in the record under seal. If an appeal

01:13PM 1 is filed, counsel on appeal will be permitted access to the
01:13PM 2 report, except counsel on appeal will not be permitted access
01:13PM 3 to the recommendation section.

01:13PM 4 The parties have filed the appropriate statement of
01:13PM 5 parties with respect to sentencing factors. There's no
01:13PM 6 dispute about the facts in the report and therefore, the Court
01:13PM 7 adopts those facts as its findings of fact and hereby
01:14PM 8 incorporates them into the record.

01:14PM 9 There are no objections to the probation officer's
01:14PM 10 conclusions as to the applicable guidelines. The Court
01:14PM 11 recommends that the defendant's base offense level under
01:14PM 12 Guideline Section 2G2.2(a)(1) is 18. The report also
01:14PM 13 recommends a two-level upward adjustment pursuant to Guideline
01:14PM 14 Section 2G2.2(b)(2), as the instant offense involved material
01:14PM 15 of a prepubescent minor under the age of 12.

01:14PM 16 The report also recommends a four-level upward
01:14PM 17 adjustment pursuant to 2G2.2(b)(4), as the offense involved
01:14PM 18 material that portrayed sexual abuse of an infant or a
01:14PM 19 toddler. The report also recommends a five-level upward
01:14PM 20 adjustment pursuant to 2G2.2(b)(5), as the defendant engaged
01:14PM 21 in a pattern of activity involving a sexual abuse of a minor.

01:14PM 22 The report also recommends a two-level upward
01:14PM 23 adjustment, pursuant to 2G2.2(b)(6), as the instant offense
01:15PM 24 involved the use of a computer. The report also recommends a
01:15PM 25 five-level upward adjustment pursuant to 2G2.2(b)(7)(D), as

1 the offense involved 600 or more images. The report also
2 recommends a two-level downward adjustment for acceptance of
3 responsibility and accordingly recommends the offense level
4 should be properly calculated at level 33, with a criminal
5 history category of I, with an advisory range of 135 to 168
6 months.

7 The statutory term of imprisonment is a maximum of
8 20 years. The advisory range for a supervised release is a
9 term of five years to life. The advisory range for a fine is
10 35,000 to \$250,000, plus the cost of imprisonment and
11 supervised release or community confinement or home
12 confinement and probation.

13 In accordance with the Supreme Court decision, *U.S.*
14 *v. Booker* and the Second Circuit decision, *U.S. v. Crosby*, the
15 Court must consider the guidelines, is not bound by them. The
16 Court must also consider the factors in 18 U.S.C. 3553(a).

17 Now, I have received six letters on behalf of the
18 defendant, some medical records and a sentencing memorandum on
19 behalf of the defendant, as well as a memorandum from the
20 government. I believe that pretty much sets forth the
21 parameters here. Mr. Bagley?

22 MR. BAGLEY: Thank you, Judge. I think there's two
23 questions in every sentencing that the Court and the public
24 want answered. Those two questions are: Why did the
25 defendant, my client in this case, Daniel, commit this crime?

1 And then, two, is he going to commit a crime like this again
2 in the future?

3 As I tried to explain in my memorandum as to why I
4 think he committed this crime, Daniel is not unlike many
5 clients of mine -- and I'm sure defendants before this Court
6 charged with and convicted of crimes like these -- in that he,
7 himself, was a victim of a similar crime when he was a young
8 man, when he was a boy, five years old.

9 And for whatever reason, Judge -- and I'm not a
10 psychologist -- I do quote from Dr. Heather Wood, who tries to
11 explain this, Judge, it does, for whatever reason, hardwire
12 the brain in some way to make it more likely that someone, a
13 victim of a crime, is going to be later on accused of a crime
14 and convicted of a crime like this, Judge.

15 And the sad thing about a lot of these cases, and
16 it's no different for Daniel, is that he's ashamed of it. He
17 doesn't tell anybody about it and so he doesn't get any
18 treatment for it. And so, he leads his whole life, as his mom
19 attests to -- he didn't even tell his own mother -- he leads
20 his whole life kind of unable to deal with it, unable to grasp
21 it, unable to fight back those demons, Judge, until now.
22 Until now.

23 And I've got about 200 pages of records from Niagara
24 County Jail. I cited some of them in my papers. And he's
25 seen probably once a month by Dr. Cervantes, a psychologist.

01:18PM 1 He's seen by nurses and mental health staff at the jail on
01:18PM 2 almost a day-to-day basis, especially at the beginning.
01:18PM 3 Judge, this case is about a year old, maybe a little bit
01:18PM 4 longer. And especially at the beginning, he saw these folks
01:18PM 5 on a near daily basis. And towards the end, Judge, that has
01:18PM 6 been cut back a little bit and I think it's because he's
01:18PM 7 starting to do a little better.

01:18PM 8 And so, Judge, I think that is part of the why and
01:18PM 9 part of the will he do it again. And Judge, I have seven -- I
01:18PM 10 have seven reasons that he's not going to, as I point out,
01:18PM 11 Judge. And the first of which is for Daniel and maybe it
01:19PM 12 could be arranged, depending on the case, Judge, and depending
01:19PM 13 on the defendant who is sitting in front of you, Judge, but
01:19PM 14 for Daniel, number one, is his remorse.

01:19PM 15 I think there's a heading that says, you know, his
01:19PM 16 remorse is such that he contemplated and tried to commit
01:19PM 17 suicide. So, I don't bring that up necessarily just because
01:19PM 18 I'm asking for your mercy or your sympathy for Daniel, but I
01:19PM 19 think it demonstrates that he does take this extremely
01:19PM 20 seriously.

01:19PM 21 From day one, from the time that I have met him, he's
01:19PM 22 admitted this conduct. He's admitted to the agents the minute
01:19PM 23 that they came and raided his house where he was living with
01:19PM 24 his boyfriend. He went out to Tim Horton's and had coffee and
01:19PM 25 lunch with them and walked them through every single thing in

01:19PM 1 his past because, you know, I think what happens is the guilt
01:20PM 2 and the remorse just came spilling out. And he has been that
01:20PM 3 way ever since in his interactions, not only with me, but also
01:20PM 4 with the staff.

01:20PM 5 And I think you can find that it's genuine, because
01:20PM 6 he doesn't know that I'm going to get the records and forward
01:20PM 7 them, attach them to my memorandum, records in which he says
01:20PM 8 to the nursing staff eight, ten months ago about how
01:20PM 9 remorseful he is, how guilty he is for having committed the
01:20PM 10 crimes he stands before you convicted of.

01:20PM 11 Judge, the second reason is the microscope. And he's
01:20PM 12 going to be on supervised release for a long period of time.
01:20PM 13 He's going to be in jail, detention, prison, most likely for a
01:20PM 14 long period of time, so he will be under a microscope for the
01:20PM 15 remainder of his life. And studies have shown that that
01:20PM 16 microscope, the certainty of being caught, is actually a
01:20PM 17 better deterrent than any kind of prison time. So, certainly
01:20PM 18 Daniel now knows there is absolutely zero chance that if he
01:21PM 19 ever re-offends in any kind of fashion, he's going to be going
01:21PM 20 back to jail for an extremely long time.

01:21PM 21 Age, Judge, is another big factor for Daniel. He was
01:21PM 22 22 years old at the time of the offense. He now stands before
01:21PM 23 you, he's 23 years old. And studies have shown -- I have
01:21PM 24 probably made the argument before this Court before -- that
01:21PM 25 the cerebral cortex, the part of the brain that is responsible

1 for decision making isn't fully formed, especially in males,
2 until the age of 25. Of course, that doesn't begin to excuse
3 any kind of conduct, but I think it does demonstrate that by
4 the time he gets released from prison, he's literally going to
5 be a different person. His brain is literally going to be
6 changed in that time.

7 The single best predictor, Judge, of a successful
8 release is, I think, two-fold. Number one is family and is he
9 going to have somewhere to go and some support system? And
10 the letters speak to that. I won't belabor that point.

11 And I think the other thing is his criminal history.
12 Folks with higher criminal histories tend to recidivate.
13 Folks with lower criminal histories tend not to, to put it
14 simply. Mr. Villafane-Lozada's criminal history is absolutely
15 zero. He's a criminal history category I. He's never been
16 convicted or even charged with anything in his entire life.

17 I talked about the rehab, about how he's been in
18 treatment, really, for this whole time at Niagara County Jail.
19 And that treatment will continue and be more robust in the
20 Bureau of Prisons. Judge, Daniel is young, he's intelligent.
21 He's not somebody who, when he gets out of prison -- and I can
22 say this with a fair amount of confidence -- I don't think you
23 are going to see Daniel on a supervised release violation. I
24 don't think you're going to -- Daniel is not going to be the
25 type of person who has no future and who cannot find a life

01:22PM 1 for himself.

01:22PM 2 Given his young age, given his intelligence, I am
01:23PM 3 confident that he will have a successful life at some point
01:23PM 4 when he's released from prison. And, obviously, this all goes
01:23PM 5 to the factors that I think something in the guideline range
01:23PM 6 is not necessary. It's a heck of a lot of time that these
01:23PM 7 guidelines recommend in cases like this and I am asking for a
01:23PM 8 below guideline sentence for those reasons.

01:23PM 9 And I'd also ask you to consider the collateral
01:23PM 10 consequences of his conviction, of his imprisonment. Courts
01:23PM 11 have said that these are valid concerns that could be taken
01:23PM 12 into account when considering the 3553(a) factors; the
01:23PM 13 psychological effects of imprisonment, the supervised release,
01:23PM 14 the fact that his liberty is going to be restricted for many,
01:23PM 15 many, many years to come. And I'd highlight and focus and
01:23PM 16 emphasize, Judge, the psychological effects for Daniel, which
01:23PM 17 are severe, very severe.

01:23PM 18 For those reasons, Judge, I would ask you to consider
01:24PM 19 a below guideline sentence in a case like this, given his age,
01:24PM 20 given his remorse, given the psychological effects and the
01:24PM 21 demonstrated remorse and mental health issues that Daniel has.

01:24PM 22 THE COURT: All right, sir. This is your opportunity
01:24PM 23 to say anything you'd like to say.

01:24PM 24 THE DEFENDANT: I'm sorry.

01:25PM 25 MR. BAGLEY: Judge, obviously, it's difficult for

1 Daniel to speak. I can kind of physically see the anxiety
2 building in him. He did write a letter to this Court, Judge,
3 and I'd ask you to consider that.

4 THE COURT: Anything on behalf of the government?

5 MR. MURRAY: Your Honor, as stated in the
6 government's response to defendant's sentencing memo, this is
7 not a run-of-the-mill ordinary possession of child pornography
8 case. The defendant's history and characteristics reveal that
9 he has sexual attraction to minors and that he engaged in
10 sexual contact with minors on numerous occasions throughout
11 his life.

12 THE COURT: Twice.

13 MR. MURRAY: On multiple occasions, Your Honor, yes.

14 He stated, during a polygraph examination, his
15 primary sexual interest were minor males approximately eight
16 years old. He engaged in sexual conduct with a 14-year-old
17 minor male when the defendant was 19 years of age. He engaged
18 in sexual contact with a 15-year-old minor male when he was 21
19 years old on numerous occasions. The defendant also admitted,
20 during the polygraph, that at one point, he planned to engage
21 in sexual contact with an eight-year-old male approximately
22 six months before his arrest.

23 But turning to the child pornography itself as well,
24 Your Honor, the defendant possessed images which revealed
25 sexual abuse of toddlers, such as an adult inserting his penis

1 into a three-year-old child's anus. The defendant's
2 possession of child pornography involving toddlers, in
3 combination with his plan to sexually abuse an eight-year-old
4 child, in combination with him saying that his sexual
5 preference is for eight-year-old children and the fact that he
6 did engage in actual hands-on sexual contact with two
7 identified minor victims that we're aware of, that does, in
8 fact, in the government's position, justify a guideline
9 section, respectively, in the higher end of the range.

10 The defendant -- the government takes the position,
11 respectfully, that he's a serious threat to the safety of the
12 public, minors in the community. The defendant's actions
13 harmed a number of victims, some of them known, some of them
14 unknown. And the defendant deserves, respectfully, a just
15 punishment for his actions which provide for adequate
16 deterrence. And the government submits that a sentence within
17 the higher end of the guideline range, as noted in our
18 response to the sentencing memorandum, is sufficient but not
19 greater than necessary to comply with the factors of 3553(a)
20 in this case.

21 THE COURT: Well, I have carefully read all the
22 pretrial reports, letters. I received medical reports and I
23 don't think there's any cases that a judge has for sentencing
24 that are more difficult than cases involving child
25 pornography. They are certainly up there in the category of

01:28PM 1 the most serious offenses. And it certainly seems to me that
01:28PM 2 that has to never be forgotten or ignored. And I certainly,
01:29PM 3 in this case here, there is a lot of information about his
01:29PM 4 activity.

01:29PM 5 Pursuant to the Sentencing Reform Act of 1984, the
01:29PM 6 judgement of the Court is that the defendant is hereby
01:29PM 7 committed to the custody of the Bureau of Prisons to be
01:29PM 8 imprisoned for a period of 120 months. Cost of incarceration
01:29PM 9 fee is waived. He shall forfeit his interest in the property
01:29PM 10 specifically set forth in section 7 of the plea agreement
01:29PM 11 incorporated herein.

01:29PM 12 Upon release, he shall be placed on supervised
01:29PM 13 release for a period of 10 years. He shall report in person
01:29PM 14 to the probation office in the district in which he is
01:29PM 15 released within 72 hours. He shall comply with the standard
01:29PM 16 conditions of supervised release adopted by the Court. He
01:29PM 17 shall not commit another federal, state or local crime. He
01:29PM 18 shall be prohibited from possessing a firearm or other
01:29PM 19 dangerous device. He shall not possess a controlled
01:29PM 20 substance. He shall cooperate with the collection of a DNA
01:29PM 21 sample, as required by the Justice For All Act of 2004.

01:29PM 22 Since the instant offense occurred after September
01:30PM 23 1994, but is not related to drug testing (sic), does not have
01:30PM 24 a history of substance abuse problems, the mandatory for drug
01:30PM 25 testing is waived.

1 He shall not use or possess any computer, data
2 storage device or any internet capable device unless the
3 defendant participates in the computer internet monitoring
4 program or unless authorized by the Court or the probation
5 office.

6 He must provide the U.S. Probation Office with
7 advanced notification of any computer or computers, automatic
8 service or services or connected device or devices that will
9 be used during the term of supervision. The probation officer
10 is authorized to install any application that is necessary to
11 surveil all activity on computer or computers or connected
12 device or devices owned by or operated by the defendant.

13 He shall be required to pay the cost of monitoring
14 services. The U.S. Probation Office shall be notified by
15 electric -- via electronic transmission of impermissible
16 suspicious activity or communications occurring on such
17 computer or connected device consistent with the computer
18 monitoring policy in effect by the probation office.

19 If triggered by impermissible or suspicious activity,
20 he shall consent to and cooperate with the unannounced
21 examinations of any computer equipment owned or used by the
22 defendant. Examinations shall include, but are not limited to
23 the retrieval and copying of all the matter from the computer
24 or computers connected to the device or devices, storage media
25 and any internal or external paraphernalia that may involve

1 removal of such equipment for the purpose of conducting a more
2 thorough inspection. Any such monitoring examination is
3 simply designed to avoid, as much as possible, bringing any
4 privileged information or any private material that is not
5 illegal or reasonably likely to lead to illegal material or
6 evidence related to illegal activity.

7 He shall participate in the sex offender specific
8 treatment program and follow the rules and regulations of the
9 program. The probation office will supervise the details of
10 the defendant's participation in a program, including the
11 selection of a provider and schedule. Defendant is not to
12 leave treatment until complete or is ordered by the Court. He
13 shall be required to contribute to the cost of services
14 rendered.

15 He shall not have any deliberate contact with any
16 child under 18 years of age, excluding his biological or
17 adopted children, unless approved by the probation officer or
18 by the Court. He shall not loiter within 100 feet of
19 schoolyards, playgrounds, arcades or other places primarily
20 used by children under the age of 18.

21 The probation office has the discretion to authorize
22 the defendant to pick up his children from school or other
23 functions. However, authorization must be obtained in advance
24 by the probation officer or, alternatively, from the Court.
25 He shall register with the state sex offender registration

1 agency in any state where he resides, is employed, carries out
2 a vocation or is a student and shall provide proof of the
3 registration to the probation officer.

4 The probation office is authorized to release the
5 defendant's presentence report to the New York State Board of
6 Examiners of Sex Offenders. Further disclosure to the county
7 court and to the parties involved in the determination of the
8 defendant's final classification level is also authorized.

9 Defendant shall submit to a search of his person,
10 property, vehicle, place of residence or any other property
11 under his control, based upon reasonable suspicion and permit
12 the confiscation of any evidence or contraband discovered.

13 He shall submit to a polygraph, computerized voice
14 stress analyzer, or any other such testing, not to exceed
15 twice in a calendar year, in addition of two retests per year
16 as needed. That testing may include examination using a
17 polygraph, computer voice stress analyzer or similar device to
18 obtain information necessary for supervision of the case
19 monitoring and treatment.

20 The defendant shall answer the questions posed during
21 the examination, subject to defendant's right to challenge, in
22 a court of law, the use of such statements as violations of
23 the defendant's Fifth Amendment rights. In this regard, he
24 will be deemed not to have waived his Fifth Amendment rights
25 by making any such statements. He's also -- results of any

polygraph pretest and polygraph examinations may be disclosed to the U.S. Probation Office and the Court, but should not be further disclosed without a court order. The defendant is required to contribute to the costs of services rendered.

He shall participate in the mental health treatment program including mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule if inpatient treatment is recommended, however, it must be approved by the Court unless the defendant consents. He is not to leave such treatment until completion or is ordered by the Court.

While in treatment or taking any psychotropic medication, he shall abstain from the use of alcohol. He'll be required to contribute to the cost of services rendered. He shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit the confiscation of any evidence or contraband discovered.

The Court finds the defendant is indigent and cannot afford the mandatory \$5,000 Justice For Victims of Trafficking Act of 2015 assessment. However, I will order the mandatory special assessment of \$100, which is due immediately. Payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program.

1 While he is in prison, I will recommend that he be --
2 receive mental health treatment, including a mental health
3 evaluation and any treatment that is determined that he needs
4 while he is incarcerated.

5 The reasons for the sentence. In determining the
6 sentence, the Court has considered the advisory range and the
7 points raised by counsel and the defendant and I have
8 carefully considered the factors in 18 U.S.C. 3553(a) and find
9 the sentence imposed is sufficient, but not greater than
10 necessary to comply with the purposes of sentencing set forth
11 in 18 U.S.C. 3553(a). I have given a variance here. I went
12 to 120 months versus 133 months. I believe -- I feel, in this
13 case here, I know the government asked for a higher end of the
14 guideline range. I don't think that's necessary here.

15 He's a young man. He's -- he has no prior record,
16 appears to be very remorseful. He admitted his involvement in
17 this activity almost immediately. He was very candid and the
18 information has been very helpful. I think the information
19 that has been provided, much of the information he provided
20 during the polygraph, which is kind of unusual for somebody to
21 go through a polygraph examination.

22 But the information that the government's alluded to
23 and that the Court is aware of that's in the report came from
24 him directly. And I feel that that is very, very important,
25 particularly in the event that mental health treatment is

01:37PM 1 necessary. I do not like to hold that information against an
01:38PM 2 individual. I feel it's more helpful, for purposes of
01:38PM 3 rehabilitation and treatment, and will go a long way in
01:38PM 4 helping him deal with these demons that he has to deal with,
01:38PM 5 which I think is very, very unfortunate. And the fact that he
01:38PM 6 did that, I feel that a sentence a little below the guideline
01:38PM 7 range is a fair and reasonable sentence.

01:38PM 8 You have a right to appeal the sentence, sir, if you
01:38PM 9 feel the Court misapprehended its authority or imposed an
01:38PM 10 illegal sentence. However, you did waive your right to
01:38PM 11 appeal. If you feel that waiver is not a valid waiver, you
01:38PM 12 may take that issue before the Second Circuit Court of
01:38PM 13 Appeals. Anything further?

01:38PM 14 MR. MURRAY: Your Honor, just as far as the
01:38PM 15 forfeiture is concerned, as contained in the forfeiture
01:38PM 16 section of the plea agreement and the preliminary order of
01:38PM 17 forfeiture, the identified assets will be forfeited to the
01:38PM 18 United States with the final Order of Forfeiture.

01:39PM 19 THE COURT: Is there an order somewhere?

01:39PM 20 MR. MURRAY: Yes, Your Honor.

01:39PM 21 THE COURT: Do I have it here?

01:39PM 22 Denise, do I have the order?

01:39PM 23 THE CLERK: They usually send it after sentencing.

01:39PM 24 THE COURT: Provide the order to me and I'll sign it.

01:39PM 25 MR. MURRAY: Yes, Your Honor. Thank you. With that,

01:39PM 1 the government would dismiss the open counts in the
01:39PM 2 indictment, Counts 1 and 3 of the indictment.

01:39PM 3 THE COURT: Counts what?

01:39PM 4 MR. MURRAY: One and three.

01:39PM 5 THE COURT: All right. He pleaded guilty to Count 2?

01:39PM 6 MR. MURRAY: That's correct, Your Honor.

01:39PM 7 THE COURT: Okay. Motion is granted.

01:39PM 8 MR. MURRAY: Thank you.

01:39PM 9 MR. BAGLEY: Judge, I'm sorry. If I may, can I be
01:39PM 10 heard on one thing? I do -- as you know, Judge, it's the
01:39PM 11 conditions are kind of a hot topic in the Second Circuit. I
01:39PM 12 know there's a few issues that are pending on appeal. So,
01:39PM 13 just to preserve the record, I would just like to note an
01:39PM 14 objection to a few of the conditions of supervision.

01:39PM 15 THE COURT: Such as?

01:39PM 16 MR. BAGLEY: So, I have four, Judge, that I'd like to
01:39PM 17 note; the sex offender treatment. Judge, we're objecting to
01:40PM 18 that, specifically on the basis of it being unnecessarily
01:40PM 19 vague in the sense that the probation officer supervises the
01:40PM 20 details of the supervision. And Judge, I'm sorry, this comes
01:40PM 21 from the appeal unit, so please don't hold me personally
01:40PM 22 responsible for this. So, the objection there, Judge, is
01:40PM 23 apparently in other cases, probation officers have sat in on
01:40PM 24 treatment. And we think that that, you know, impairs the
01:40PM 25 ability of the treatment that, you know, the client to be

01:40PM 1 candid during treatment. And because it's kind of vague, we'd
01:40PM 2 object to it on that basis.

01:40PM 3 THE COURT: All right. That objection is noted.

01:40PM 4 MR. BAGLEY: Thank you, Judge. I do have a few
01:40PM 5 others, Judge. I'm sorry. I can list them if you want and I
01:40PM 6 won't explain them necessarily.

01:40PM 7 THE COURT: All right.

01:40PM 8 MR. BAGLEY: So, the computer internet, the fact that
01:40PM 9 Mr. Villafane-Lozada was required to pay the entire cost of
01:41PM 10 it. He's indigent and that could infringe on his First
01:41PM 11 Amendment rights. The computer internet monitoring program is
01:41PM 12 what I'm speaking of, Judge.

01:41PM 13 Then the notification of risk, Judge, is a now a new
01:41PM 14 standard condition. We'd argue that that still improperly
01:41PM 15 delegates power to probation.

01:41PM 16 And finally, the polygraph provision, Judge. Not
01:41PM 17 exactly the polygraph, but the part in the polygraph that
01:41PM 18 allows probation to use the voice stress analyzer and then the
01:41PM 19 next section says or any similar device, Judge. So, we'd
01:41PM 20 object to that.

01:41PM 21 THE COURT: All right. Objection is noted. Court
01:41PM 22 will be in recess.

01:41PM 23 THE CLERK: All rise.

01:42PM 24 (Proceedings ended at 1:42 p.m.)

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* * * * *

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,